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~~The Corporation Trust Company~~

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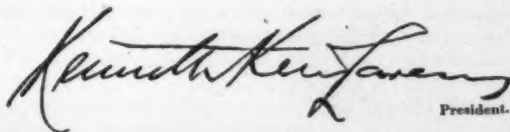
May, 1918

Pages 209-228

Federal Regulation of the Issue of Securities

NO corporation should now be organized, nor should an existing corporation issue stock, bonds, notes, or other securities for capital purposes without first considering the application to it of the War Finance Corporation Act, and the proper method of compliance therewith.

The Capital Issues Committee, appointed under this Law, will soon issue Regulations which will explain the scope of the Act, and the procedure for a submission of contemplated issues.



President.

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THE POLICY OF THE CORPORATION TRUST COMPANY in the organization, qualification, statutory representation and maintenance of corporations, is to deal exclusively with members of the bar.

The object of The Corporation Journal is to furnish corporation attorneys, and others interested, with a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative index is issued from time to time. The Corporation Journal is mailed each month, without charge, to those who request to be placed upon the mailing list.

DOMESTIC CORPORATIONS.

GEORGIA.

A DEED SIGNED IN THE NAME OF THE CORPORATION by the President and Secretary, with the corporate seal affixed, is prima facie valid even though the attestation of the President's signature is improperly witnessed. The seal of the corporation is its signature. *Frazier v. Swain*, 95 S. E. 211.

STOCK ASSIGNED IN BLANK AS COLLATERAL may be presented for transfer by the assignee, and a new certificate issued in its name. Such stock may then be voted by the assignee, under by-laws providing that no person should have the right to vote stock except those in whose names the stock stood on the books of the company. *Hardman v. Barrow*, 95 S. E. 209.

IOWA.

RETIREMENT OF STOCK.—The funds of a partnership were used to purchase preferred stock of an Iowa corporation whose charter contained a provision that holders of the preferred stock could, at their option, "retire the same at thirty-three and one-third per cent per annum in the products of the company at current prices." Title to this stock was taken in the name of one of the partners. In a suit by the corporation against the partnership the stock was tendered in payment, in accordance with the above mentioned redemption privilege, but was refused. The Supreme Court sustains the corporation, holding that as the stock stood in the name of one of the partners individually no contractual relation existed between the corporation and the partnership, and in the absence of agreement to the contrary a creditor cannot be compelled to receive anything but money in payment of indebtedness. *National Sewer Pipe Co. v. Smith Jaycox Lumber Co.* 166 N. W. 708.

MASSACHUSETTS.

AN ACT AUTHORIZING DOMESTIC CORPORATIONS TO MAKE CERTAIN CONTRIBUTIONS IN TIME OF WAR. Chap. 196, General Acts

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of 1918, in effect May 7, 1918, provides as follows: "Every domestic corporation or association organized for profit may, during the continuance of the war, by a vote of a majority in interest of the stockholders or shareholders present and voting at a meeting called for that purpose, authorize the directors or trustees to contribute from time to time for the relief, aid and comfort of the armed forces of the United States an amount not exceeding in the aggregate during any fiscal year five per cent of the net profits of the corporation or association for the preceding year: *provided, however*, that if any stockholder or shareholder at or prior to such meeting shall file with the clerk his written objection to such action, the corporation or association shall retain out of its contribution an amount equal to the interest of such stockholder or shareholder therein, and shall pay over the same, on demand, to him at any time within six months after the balance of the contribution shall have been paid."

MICHIGAN.

DISSOLUTION. Section 40 of the Judicature Act of 1915 providing for the dissolution of insolvent corporations, upon petition of the directors to a Court of Chancery, does not contemplate the dissolution of a going corporation, so that a holding company can thus acquire its stock which it could not otherwise acquire. A majority stockholder will not be permitted in this way to defeat the interests of minority stockholders. In re Paine, 166 N. W. 1036.

MONEY DEPOSITED WITH A CORPORATION as security for the performance of a contract creates merely the relation of debtor and creditor, is not a pledge, gives no preferred claim on the assets in the possession of a trustee in bankruptcy and creates no personal liability on the part of the directors for mingling it with the common funds of the corporation. Wilcox v. Gauntlett, 166 N. W. 856.

MINNESOTA.

FEATURES OF THE MINNESOTA CORPORATION LAWS. There is no annual franchise tax; incorporators need not be residents; more than one class of stock can be issued; the charter may contain provisions defining and regulating the powers of the corporation and of the directors and the stockholders; an executive committee is provided for in the statutes; corporations, except railroad, canal and turnpike companies, cannot hold more than five thousand acres of real estate nor can land be held for more than ten years unless necessary for the corporation's business; if more than twenty per cent of the stock is held by aliens the corporation cannot hold real estate within the state; the corporate name must contain the word "company," "corporation," bank," "association," or "incorporated"; corporate existence of general corporations is limited to thirty years; capital stock may not be less than \$10,000; the par value of shares in ordinary corporations cannot be less than \$1 nor more than \$100; mining, manufacturing and mechanical companies are permitted to hold stock in other corporations, but only when the holders of a majority of the stock so elect; there is no express provision for issuing stock for property; the stockholders, except in manufacturing and mechanical

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corporation, are liable for corporate debts to the amount of stock owned, in addition to their liability for unpaid stock; stockholders become personally liable for corporate debts for failure to comply substantially with the provisions of law as to organization and publicity; stockholders' meetings and directors' meetings (except mining companies) must be held within the state.

COST OF ORGANIZATION IS AS FOLLOWS:

Fee to State Treasurer on authorized capital of \$50,000 or less, \$50; each additional \$10,000, \$5. This fee does not apply to corporations formed and operated solely for cattle raising, agricultural, beet growing and fruit canning purposes, or for telephone companies connecting places of less than 2,000 inhabitants. These companies pay no fee aside from the expense of recording.

Fee to Secretary of State:

Recording (15 cents per folio) about.....\$3.00

Issuing certificate of incorporation.....\$1.00

Certified copy, if desired, 15 cents per folio and 50 cents for certificate.

Fee to Register of Deeds:

Recording, 20 cents per folio.

Advertising charter two times, from \$15 to \$20.

TAXATION. There is no annual franchise tax.

PROCEDURE FOR INCORPORATION. Three or more persons, without restriction as to citizenship or residence, subscribe and acknowledge a certificate. This certificate is first filed with the secretary of state and subsequently with the register of deeds of the county specified in the certificate as the principal place of business. The statute provides that the certificate of incorporation shall be published in a qualified newspaper in the county of the principal place of business, for two successive days in a daily or for two successive weeks in a weekly newspaper. Upon filing with the secretary of state proof of such publication, the corporate organization is complete.

WHAT THE CORPORATION TRUST COMPANY DOES to assist attorneys in the incorporation and subsequent statutory maintenance of a Minnesota corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, files and records the necessary papers and assists the attorney in every possible way in the organization. Approved copies of articles of incorporation are on file in our office for reference.

It will draft and submit the articles of incorporation, by-laws and minutes of meetings and upon approval by the attorney will furnish complete facilities for incorporation attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Minnesota corporations have found it extremely convenient and expedient to confer with the nearest office of The Corporation Trust Company System and to employ the services of its representatives in Minnesota.

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Subsequent to incorporation, The Corporation Trust Company furnishes rooms for holding stockholders' and directors' meetings or holds stockholders' meetings by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering Minnesota The Corporation Trust Company drafts for approval and submits to attorneys all documents necessary to secure authority to do business in the State. Upon approval, it attends to their filing with the proper state officials. After qualification, it supplies the statutory agent, notifies the attorney of all State reports and taxes to be paid, and forward blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in Minnesota will be sent upon request and without charge.

An estimate of charges can be secured at the nearest office of The Corporation Trust Company System.

NEW YORK.

AGREEMENT FOR ELECTION OF PASSIVE DIRECTORS AND A NOMINAL PRESIDENT IS ILLEGAL. The principal stockholders in a New York corporation agreed that the plaintiff should shape the policy of the business for a year, and that any president thereafter elected should be only a nominal head and not interfere with the plaintiff's control; that the plaintiff and defendant should each name three directors and that the seventh director should be a disinterested party agreed upon by them.

The defendant after acquiring the outstanding stock, which gave him a controlling interest, refused to carry out the agreement.

The business consisted in operating a steamship. It was alleged by plaintiff, that after acquiring control the defendant mismanaged the company so as to force the corporation into insolvency, so as to buy the steamship at a reduced price, and re-sell it to a purchaser already in view.

The New York Court of Appeals holds the agreement to be illegal and void, and that its violation does not form the basis for a damage suit. In discussing the obligation of directors and their proper election, the Court says:

"The prerogatives and functions of the directors of a stock corporation are sufficiently defined and established. The affairs of every corporation shall be managed by its board of directors (General Corporation Law, Cons. Laws, ch. 23, sec. 34), subject, however, to the valid by-laws adopted by the stockholders (sec. 11, subd. 5; Stock Corporation Law. Cons. Laws, ch. 59, sec. 30). In corporate bodies the powers of the board of directors are, in a very important sense, original and undelegated. The stockholders do not confer, nor can they revoke those powers. They are derivative only in the sense of being received from the state in the sense of incorporation. The directors convened as a board are the primary possessors of all the powers which the charter confers, and like private principals they may delegate to agents of their own appointment the performance of any acts which they themselves can perform. The recognition of this principle is absolutely necessary in the affairs of every corporation whose powers are vested in a board of directors

(Hoyt v. Thompson's Executor, 19 N. Y. 207, 216). All powers directly conferred by statute, or impliedly granted, of necessity, must be exercised by the directors who are constituted by the law as the agency for the doing of corporate acts. In the management of the affairs of the corporation, they are dependent solely upon their own knowledge of its business and their own judgment as to what its interest require (Beveridge v. N. Y. Elev. R. R., 112 N. Y. 1). While the ordinary rules of law relating to an agent are applicable in considering the acts of a board of directors in behalf of a corporation when dealing with third persons, the individual directors making up the board are not mere employees, but a part of an elected body of officers constituting the executive agents of the corporation. They hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty. As a general rule, the stockholders cannot act in relation to the ordinary business of the corporation, nor can they control the directors in the exercise of the judgment vested in them by virtue of their office. The relation of the directors to the stockholders is essentially that of trustee and cestui que trust. The peculiar relation that they bear to the corporation and the owners of its stock grows out of the inability of the corporation to act except through such managing officers and agents. The corporation is the owner of the property, but the directors in the performance of their duty possess it, and act in every way as if they owned it (People ex rel. Manice v. Powell, 201 N. Y., 194). Directors are the exclusive, executive representatives of the corporation and are charged with the administration of its internal affairs and the management and use of its assets. (Pollitz v. Wabash R.R., 207 N. Y. 113.) Clearly the law does not permit the stockholders to create a sterilized board of directors. Corporations are the creatures of the state and must comply with the exactions and regulations it imposes. We conclude that the agreement here is illegal and void and its violation is not a basis for a cause of action." Manson v. Curtis (N. Y. Court of Appeals, N. Y. Law Journal, May 14, 1918).

LAW IN RELATION TO NOTICE OF TIME AND PLACE OF HOLDING ELECTIONS OF DIRECTORS. Chapter 267 of the laws of 1918 has been amended so as to make publication optional. Heretofore, the statute has required that notice be published. As amended, this section now provides that:

"Notice of any election of directors shall be either published at least once in each week for two successive weeks immediately preceding such election in a newspaper published in the county where such election is to be held, or delivered personally or mailed not less than ten nor more than twenty days before the election to each person who appears on the books of the corporation as a stockholder. The by-laws may require such notice to be published and also mailed or delivered as above provided."

OPINION OF CHARLES E. HUGHES ON THE ACT AUTHORIZING CONTRIBUTIONS FOR WINNING THE WAR. The former Justice of the United States Supreme Court, under date of May 9, 1918, rendered the following opinion with reference to the validity and scope of Chapter 240, Laws of 1918, which was published in full on page 197 of The Corporation Journal for April, 1918:

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"In accordance with your (Red Cross) request, I confirm what I said at our conference yesterday with respect to the validity and scope of the recent Act of the Legislature of New York authorizing corporations of this State to co-operate in the maintenance of instrumentalities for the winning of the War. It is unnecessary to review the decisions cited by Judge Ingraham in his opinion and I fully concur in his view that the Act is constitutional.

The Act, in substance, authorizes directors or trustees of corporations of this State to expend the moneys of the corporation for the support of instrumentalities conducive to the winning of the War, when in their judgment such expenditure is expedient and will contribute to the protection of the corporate interests. This is a rule governing the administration of the corporate affairs which the Legislature could have provided in the original charter of the corporation and which the Legislature, under its reserved power to amend charters or the governing corporate law, is competent in my opinion to provide by a subsequent enactment (Miller v. State, 15 Wall. 478; Sinking Fund Cases, 99 U. S. 700; Close v. Glenwood Cemetery, 107 U. S. 466; Lord v. Equitable, 194 N. Y. 212; N. Y. C. & H. R. R. Co. v. Williams, 199 N. Y. 108; Erie R. R. Co. v. Williams, 233 U. S. 685). The Act cannot properly be regarded, as it seems to me, as working a deprivation of any vested right or as defeating or substantially impairing the object of the grant to the corporation and thus as being outside the reserved power of the Legislature, but on the contrary *is plainly for the purpose of giving a definite legislative sanction to action tending to promote the security of the corporate enterprise.* The expenditures are authorized when in the judgment of the directors or trustees they will contribute to the protection of the corporate interests, and the matter is thus confided to the honest judgment of those charged with the administration of the corporate affairs.

The War is the fundamental fact in our life at this time, and the security of all our enterprises is dependent upon our conduct of the War. If we permit essential agencies for its prosecution to languish or fail for lack of support, if by their neglect we allow the morale of our forces to be impaired and our military efficiency to be undermined, and in consequence cause widespread discouragement and distrust, we should invite the gravest conditions of disorder and panic, imperilling all our undertakings which rest on stability and public confidence. In short, the maintenance of the agencies essential to the conduct of the War and the proper care and protection of our forces during the War, have a vital relation to the security of business undertakings and particularly to the security of those organizations holding large accumulations. The question is not one of permitting the use of corporate moneys for what are or may be called "worthy objects" outside the corporate enterprise, but for the maintenance of the very foundation of the corporate enterprise itself.

The Government has not undertaken, through its borrowing and taxing powers, to support all the activities that are essential to the conduct of the War. It is the established policy of the Government that some of these important activities, such as those of the Red Cross, should be supported, in part or altogether, independently of governmental appropriation. But this policy is designed to enlist and encourage the active co-operation of the public and does not in any way alter the fact that these agencies are essential to the successful prosecution of the War. It would be, in my judgment, a very narrow and wholly unwarrantable view of the present

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situation to say that the support of the activities of the Red Cross absolutely necessary as they are to the protection of our forces and the maintenance of their morale, is not a matter of direct and vital importance to corporate undertakings and that an Act of the Legislature recognizing the plain relation of our military efficiency to the success of business enterprise, and authorizing support by corporations of the agencies having the character described, is beyond the legislative power. Subject to statutory restrictions, the directors or trustees of corporations are charged with the duty of deciding questions with respect to the expenditure of corporate moneys in the protection of corporate interests, *and in this case the Legislature* by express enactment has wisely removed from controversy the question of legislative authority by explicitly committing the matter to the judgment of the directors or trustees, and I am of the opinion that this enactment being neither arbitrary nor confiscatory, nor a violation of vested right, is within the legislative competency.

You have also asked my opinion with respect to the scope of the Act; that is, whether it embraces purely mutual insurance companies, or corporations without capital stock. The Act provides:

"That during the continuance of the War any corporation organized under the laws of this state may co-operate," etc.

This language is explicit and comprehensive. The words "any corporation organized under the laws of this state" embrace insurance corporations, whether stock or mutual companies (General Corporation Law, Sec. 2). There is no other express provision in the Act which limits the natural and legal meaning of these words, and the question is simply whether such a limitation should be implied.

The Act, after authorizing the contributions for the described purposes, contains a proviso limiting such expenditures in any calendar year to one per centum on the capital stock outstanding, unless specified notice is given to the stockholders, and unless, in the event of written objection by a stated percentage of stockholders, further expenditure is authorized at a stockholders' meeting. This proviso is plainly applicable to stock corporations, and the question is whether, from the existence of this proviso, it should be implied that the authority conferred by the Act is conferred on stock corporations alone.

As the Act contains no such limitation in terms, this question in my judgment should be determined with reference to the manifest purpose and policy of the enactment. As was said by the Court of Appeals in *Price v. County of Erie*, 221 N. Y. 260, 266: "Whenever a statute needing construction shows forth a general and dominant purpose, it must be construed with reference to such purpose. The purpose cannot be defeated or thwarted by selecting and isolating sentences of the statute which seems inharmonious with it. A statute must receive such reasonable construction as will, if possible, make all its parts harmonize and render them consistent with its scope and purpose." (See also *Olcott v. Tioga R. R. Co.*, 20 N. Y. 210, 222; *Holmes. Carley*, 31 N. Y. 289, 290.)

In the present case, the policy which underlies the Act is manifestly not concerned with stock corporations solely. The reason for permitting contributions by them to support agencies needed to carry on the War is not concerned with their form of organization, or with the fact that they have capital stock, *but with the propriety of insuring the stability and security of enterprise and property.* This exigency

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is just as plain in the case of mutual companies, and particularly in the case of mutual insurance companies with their large holdings, as in the case of stock companies. There is no reason why the moneys of stock corporations should be used for the purposes described and not the moneys of mutual insurance corporations. *The protection afforded by the agencies for winning the War is needed by both and is secured to both.* As the security and stability of mutual insurance companies are equally involved, it would be difficult to understand or approve a legislative policy which would extend this opportunity of aiding in the support of the agencies required for the winning of the War, and thus to protect their vital interests, to the one class of corporations and deny it to the other. Certainly such an intent should not be ascribed to the Legislature in disregard of the express and comprehensive terms in which it has conferred its authority.

The fact that the Legislature has seen fit to fix a limit to the amount of the contribution in the case of stock corporations is not controlling, as it might easily have been considered practicable to provide a limitation and a requirement of further authorization in such cases and not practicable in others. Whether there should be such a limitation and its scope was a matter for the legislative judgment.

The explicit language of the Act that "any corporation organized under the laws of this state may co-operate," etc., should not be cut down by implying a limitation which is foreign to the fundamental purpose of the act, and I am therefore of the opinion that the Act does embrace mutual insurance companies. Directors or trustees of mutual insurance corporations represent all those who are interested and the matter is appropriately confided to their honest judgment.

You also submit the question of the construction of the limitation contained in the proviso with respect to stock corporations which have shares of stock without par value. Upon this point I refer you to Section 23 of the Stock Corporation Law providing as follows:

"Sec. 23. Amount of capital stock and of shares within meaning of other laws.—For the purpose of any rule of law or of any statutory provision (other than the foregoing sections nineteen, twenty, twenty-one and twenty-two) relating to the amount of the capital stock of a corporation or the amount or par value of its shares, the aggregate amount of the capital stock of any such corporation formed pursuant to section nineteen hereof shall be deemed to be the aggregate amount specified in the certificate or amended certificate of incorporation or of reorganization as the amount of capital with which the corporation will carry on business; the amount or the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate or such amended certificate; and the amount or the par value of each other share shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate or in such amended certificate in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal."

I think that the extent of contributions which may be made under the Act in question by stock corporations having shares without par value may be ascertained by the application of this section."

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PENNSYLVANIA.

AN AFFIDAVIT OF DEFENSE MUST BE SIGNED BY AN OFFICER OF A CORPORATION or by one having personal knowledge of the facts. Without further facts a "chief accountant" is not such an officer. *Mintz v. Tri-County Natural Gas Company*, 103 Atl. 285.

A PENNSYLVANIA CORPORATION WHICH HAS FAILED TO PAY TEN PER CENT IN CASH required by statute is not affected in its rights as a corporation de facto in transactions with third parties prior to the entry of judgment of ouster by the Commonwealth. *Northrop v. Finn Construction Company* 260 Pa. 15.

WEST VIRGINIA.

A SUBSCRIPTION AGREEMENT MADE PRIOR TO ORGANIZATION is a continuing offer and becomes binding upon acceptance by the corporation when formed. The acceptance by the corporation binds it to the performance of conditions contained in the subscription agreement. *Martin v. Rothwell*, 95 S. E. 189.

RHODE ISLAND.

CONTRIBUTIONS FROM SURPLUS PROPERTY, OR ASSETS FOR WAR RELIEF PURPOSES: Chapter 1662 of the Laws of 1918, approved by the Governor on April 19, 1918, provides as follows:

"Section I. The directors or trustees of any corporation organized under the laws of this State may appropriate and contribute to any corporation organized under the laws of the United States, or to a corporation organized under the laws of this or any other State, recognized by the government of the United States as assisting such government in connection with the existing war between the United States and the Imperial German Government and between the United States and the Empire of Austria. Such sum of money may be appropriated and contributed out of the surplus property or assets of the corporation as such directors or trustees shall determine to be proper to aid the government of the United States or to provide relief to those engaged in the war or their families during the existing emergency.

Section II. This Act shall take effect upon its passage."

ISSUE TRANSFER AND REGISTRATION OF STOCK.

GEORGIA.

MANDAMUS WILL LIE TO COMPEL A CORPORATION TO TRANSFER SHARES OF ITS STOCK TO A BONA FIDE PURCHASER AT A PLEDGEE'S SALE. This is true even though pledgor is indebted to the corporation, and purchaser had notice of a by-law of the corporation giving it a lien on the shares of its capital stock for debts owing to it by its stockholders. The pledgee's lien dates

from the pledging of the stock, not from the date of judgment, and notice to the purchaser at the pledgee's sale will not defeat his rights. *American National Bank of Atlanta v. The Atlanta Bank*, 95 S. E. 286.

FOREIGN CORPORATIONS.

MISSOURI.

MUST QUALIFICATION TAKE PLACE BEFORE CONTRACT IS EXECUTED OR WILL QUALIFICATION BEFORE PERFORMANCE OF CONTRACT BE SUFFICIENT? The Western States Construction Company of Nebraska entered into a contract with the City of Rockport for the making of a certain public street improvement. Up to the time of entering into the contract with the City and filing its bond for the proper performance of the work, it had not complied with the provisions of the Missouri statutes authorizing it to "do business" within the state. However, as soon as these things were done and before undertaking to perform any part of the work under the contract and before suit was brought involving the validity of the contract, the Construction Company complied with the statute. The Kansas City Court of Appeals holds that the contract was valid and that qualification was effected by the corporation within the proper time. The Court, in part says:

"The defendant Western States Construction Company is a Nebraska corporation, and up to the time of entering into the contract with the city and filing its bond for the proper performance of the work it had not complied with the provisions of our statutes authorizing it to "do business" within this state. However, as soon as these things were done, and before undertaking to perform any part of the work under the contract and before the suit was brought, the said defendant complied with said statutes. The question is whether the mere execution of the contracts and bond before complying with our statutes renders the contract void, notwithstanding the fact that as soon as the contract was executed and before any attempt was made to perform anything thereunder the company duly complied with our statutes. The case of *Hogan v. City of St. Louis*, 176 Mo. 149, 75 S. W. 604, clearly holds that our statutes do not mean that the company must obtain a license to do business here before it can lawfully enter into a contract in this state to do any business herein; that "the obtaining of a desirable contract is sometimes an inducement for a foreign corporation to come into the state; it is not bound to establish itself here before it can obtain such a contract." Plaintiff contends that this decision is, in effect, though not in terms, overruled by the case of *Tri-State Amusement Co. v. Forest Park, etc., Co.*, 192 Mo. 404, 90 S. W. 1020, 4 L. R. A. (N. S.) 688, 111 Am. St. Rep. 511, 4 Ann. Cas. 808. It may be conceded that the general language used by Judge Marshall in several places in that opinion is susceptible of this interpretation. And we might so hold were it not for the decision in *Wulff v. Armstrong Cork Co.*, 250 Mo. 723, 157 S. W. 615. That case quotes the *Hogan Case* upon the precise point involved herein and follows the principle therein enunciated. It being a later and the last expression of the Supreme Court on the subject, we follow it." *Frazier v. City of Rockport*, 202 S. W. 266.

NEW YORK.

SOLICITING ORDERS TO BE ACCEPTED OUTSIDE OF STATE IS NOT DOING BUSINESS. A salesman for a foreign corporation obtained an order for the sale of a machine to a partnership located in New York and sent the order to the office of his employer at Ann Arbor, Michigan, for acceptance. The machine was shipped to the salesman and he delivered it to the purchaser. The foreign corporation carried no stock of goods in New York and did not keep any bank account there. In an action for the purchase price of the machine, it was pleaded that the foreign corporation was not entitled to a recovery because it had not qualified in New York as a foreign corporation. The court holds that the corporation was not "doing business" in the state in the sense of the statutory requirements, but was engaged in interstate commerce. "It is clear that a corporation may engage in interstate commerce and do nothing in New York except in furtherance of that commerce and not be brought within the provision requiring it to take out a license to do business in this state." *Economy Baler Co. v. Pintliano*, 169 N. Y. Supp. 1019.

CANADA.

(Under the editorial supervision of Davidson, Wainwright, Alexander and Elder of Montreal.)

FIRE INSURANCE REGULATIONS. Report of the Proceedings of the Canadian Bar Association held at Toronto on the 15th and 16th January, contains an interesting report of the Sub-Committee respecting Fire Insurance Statutory Conditions in Canada. In all the Provinces of Canada, save Prince Edward Island, legislation regulates the terms and conditions of contracts of Fire Insurance, although in England, there are no Statutory Conditions, and apparently no demand for such legislation.

The original idea, as dealt with by the Commission of Judges in Ontario, was to ascertain what would be considered "reasonable conditions" from a judicial aspect, with no intention to fix the conditions as Statutory additions to the contract. The Commission sought to determine conditions which would not be questioned judicially for unreasonableness. The introduction of Statutory Conditions into every policy was an after-consideration, nor was prohibition as to variation from the conditions suggested in the Commissioner's report, though such variation would, of course, render reasonableness of the variation subject to scrutiny.

In Canada, variations are, by the Statutes, permitted, but such variations are subject to judicial interpretation as to their reasonableness. As a matter of practice in Canada, few variations in the Statutory Conditions are made, with the exception of those relating to the so-called "Co-Insurance Clause."

The question has been debated as to whether Statutory Conditions imposed by the different Provinces should be uniform throughout Canada, and is generally answered in the affirmative. As a matter of fact, there is no unsurmountable divergence of opinion between the Provinces in this respect. In fact, following the conference of the Insurance Superintendents of the four Western Provinces in 1914 uniform Statutory Conditions were agreed upon and actually enacted by Manitoba, Saskatchewan and Alberta, which follow closely those of Ontario, as revised in 1912.

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Hence, there are at present four Provinces, with very similar Statutory Conditions.

Although the Provinces have hitherto alone dealt with Statutory Fire Conditions, some years ago, a bill was introduced in Parliament, to bring about a uniform policy of Fire Insurance for the Dominion, which did not become law. It is suggested that it might now be considered, as to whether, in the present more or less nascent state of Insurance Law in this respect, it would not be advisable to consider whether the subject might properly be dealt with by Dominion Legislation.

TRANSFER OF SHARES. VETO. ULTRA VIRES. A company constituted under a special Act incorporating Part II of the Companies Act (c. 79, R. S. C., 1906) has no power to make a by-law restricting or empowering its Directors to veto the transfer of its shares; a by-law providing that transfers shall be subject to the approval of the Directors means that they are to be satisfied as to matters within their power upon which they have to exercise a judgment.

The decision of the Privy Council in the above respect does not deal with the restrictive By-laws, giving to the other Shareholders a prior option to purchase the shares offered for sale at the price fixed at the previous annual meeting, based upon the annual statement. Such latter arrangement would not appear to be open to the objection, upon which the Privy Council Judgment was apparently based. *Canada National Fire Ins. Co. v. Hutchings*, 39 D. L. R. 401.

TAXATION.

ALABAMA.

A FRANCHISE TAX which in the case of domestic corporations is based on the paid up capital stock and in the case of foreign corporations on the amount of capital actually employed in the state, the rate being the same, is not a violation of the Fourteenth Amendment of the Federal Constitution. *Louisville & N. R. Co. v. State*, 78, So. 93.

COLORADO.

BONDS PAYABLE TO BEARER OWNED BY NON-RESIDENT DECEDENT NOT SUBJECT TO INHERITANCE TAX. A resident of Brooklyn owned certain unregistered bonds in a Colorado corporation. Upon his death the State of Colorado attempted to levy an inheritance tax under laws of 1913, page 539. The Supreme Court deciding against the State, says "it is settled law that it is the succession which is the subject of the tax, and not the things inherited. In the case at bar there is no ancillary administration here. The decedent, the legatees, and the bonds themselves, now are, and have been at all times, beyond this jurisdiction. * * * In substance it is urged by defendant in error, that the State has authority under the statute to tax the right of non-resident legatees to inherit property outside of the State, under the foreign-probated will of a non-resident testator. The bonds being unregistered, pass upon delivery, just like money. * * * For taxing purposes the debt which the bonds represent is the property of the bond-

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holder, and not of the debtor. The situs of the bonds is the domicile of the owner, and they are taxable there. This is the rule except when such property is not in the custody of the non-resident owner, but is physically present in the state proposing to levy the tax." *Walker v. People*, 171 Pac. 747.

NEW YORK.

AMENDMENTS TO STATE INCOME TAX LAW. Chapters 271, 276, 292 and 417 of the laws of 1918 provide for various amendments to the Tax Law in relation to the franchise tax on income of manufacturing and mercantile corporations.

The Legislature has attempted to clarify certain provisions of the Law which have been subject to various interpretations and has added other provisions designed to facilitate the administration of the Law. As amended, the Law now provides that a report be filed annually on or before July 1st *or within thirty days after the making of the report of net income to the United States Treasury Department for any fiscal or calendar year.* Provision has also been made for the filing of the consolidated report for all corporations merged or consolidated during the year ending the 31st day of October.

The tax is payable on or before the 1st day of January in each year *or within thirty days after notice of the tax has been given if such notice is given subsequent to the first day of December of the year for which such tax is imposed.*

Heretofore, manufacturing and mercantile corporations, incorporated under the Laws of New York but showing no income arising from sources within the State, have escaped taxation entirely. The Law, as amended, provides that every domestic corporation exercising its franchise in this State and every foreign corporation doing business in this State, other than those exempted, shall be subject to a minimum tax of not less than \$10 and not less than 1 mill on each dollar of the apportionment of the face value of its issued capital stock apportioned to this State, which shall be determined by dividing the amount of the real and tangible personal property in this State by the entire amount of the real and tangible personal property as shown in the report and multiplying the quotient by the face value of the issued capital stock. If any such corporation has stock without par value, then the base of the tax shall be on such a portion of its paid in capital as its real and tangible personal property in this State bears to its entire real and tangible personal property.

The Act as amended provides that corporations taxable thereunder shall not be assessed on any personal property or capital stock, as provided for in Section 12 of the Tax Law, except for taxes levied for the fiscal year ending December 31, 1917, in taxing districts in which the fiscal year is coterminous with the calendar year.

Where taxes are levied for local purposes for a fiscal year beginning in 1917 and ending in 1918, such corporations shall not be assessed on personal property or capital stock except for taxes levied for such fiscal year.

If in any taxing district, by reason of the provisions of the law as originally enacted, the assessment of the personal property or capital stock of any such corporation has been omitted from the assessment roll for the fiscal year referred to above, the assessors of the district are required to enter the same in the assessment roll first prepared after the amendment goes into effect, at the valuation of such

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fiscal year, or if not then valued, at such valuation as the assessors shall determine for such year. Five days' notice and an opportunity to be heard shall be given to the corporation by the assessors.

In order to assess such property, corporations may be required to file the report required by Sec. 27 of the Tax Law. Thereafter this report shall not be required.

If any corporation pays taxes on personal property or capital stock, it shall be entitled to credit with interest for the amount of such part of the taxes so paid locally as the portion of the year 1918 for which such taxes have been paid bears to the entire calendar year.

The Act also defines personal property as including such machinery and equipment affixed to the building as would not pass between grantor and grantee as a part of the premises if not specifically mentioned in the deed, or as would, if the buildings were vacated or sold, or the nature of the work carried on therein changed, be moved, except boilers, ventilating apparatus, elevators, gas, electric and water power generating apparatus and shafting.

OUR PAMPHLET CONTAINING THE NEW YORK STATE INCOME TAX LAW, with amendments to date, is in press. Copies of this pamphlet will be available upon request after June 1st.

PENNSYLVANIA.

WHEN A MANUFACTURING COMPANY MUST PAY A MERCANTILE TAX. A Pennsylvania corporation is liable to the payment of a mercantile tax under the Act of May 2, 1899, P. L. 184, even though the company is a manufacturing company, where it maintains apart from its factory a permanent distributing station from which sales are made, and it makes no difference in this respect that the distributing station was in fact used merely as a storage place or warehouse for products, some of which were sold outside of the station by salesmen and withdrawn from the station by requisition from the factory. *Commonwealth v. Atlantic Refining Company*, 69 Superior Court, 32.

INCOME TAX.

For preceding references, see 3 Corporation Journal page 202.

A decision by the United States Circuit Court of Appeals for the Sixth Circuit contains important information with reference to suits by the Government to recover taxes (p. 558).

A treasury decision gives supplementary instruments relative to acceptance of certificates of indebtedness in payment of tax (p. 559).

A letter from a Deputy Commissioner states when a broker is not the agent for income tax purposes of a non-resident alien client (p. 561).

According to a letter from a Deputy Commissioner a foreign corporation having no office or agent in the United States collecting commissions only on account of sales of American goods abroad, is not liable to tax on amounts so earned (p. 561).

A telegram signed by the Commissioner states that a limited partnership of the New York type is held to be a partnership and not a corporation for purposes of income, war excess profits and capital stock taxes (p. 562).

A treasury decision relates to compensation for property requisitioned, or lost

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or destroyed, through war hazards, to replacement fund and to deferment of tax (p. 562).

A treasury decision amends instructions relative to reporting income derived from the sale of personal property on the installment plan (p. 564).

A telegram by the Commissioner states that there is no withholding against the Alien Property Custodian although no return of information at the source is required (p. 564).

A letter from a Deputy Commissioner relates to proceeds of insurance policies payable in installments (p. 565).

A treasury decision revokes Treasury Decision No. 1987 and states the requirements in reference to certificates by fiduciaries where bonds are owned by more than one estate or trust (p. 565).

A letter by a Deputy Commissioner related to commission determined and credited but not drawn (p. 566).

A letter from the Commissioner relates to the filing of returns by a receiver in foreclosure proceedings (p. 566).

According to a letter by the Commissioner interest paid on an amount which is in excess of the maximum permitted principal is not deductible even though the total interest paid be less than the interest computed at the contract rate on the maximum permitted principal (p. 567).

A letter by the Commissioner relates to withholding at the source and return of information in connection with income payments to the Alien Property Custodian (p. 567).

A letter by the Commissioner states what limited partnerships are held to be corporations and what limited partnerships are held not to be corporations for the purpose of income tax returns (p. 568).

A treasury decision revises Article 62 of the Income Tax Regulations and Article 2 of the Excess Profits Tax Regulations regarding limited partnerships (p. 659).

(NOTE.—The page references are to our Income Tax Service, 1918, wherein the foregoing rulings and regulations are reported in full.)

FEDERAL ESTATE TAX.

For preceding references, see 3 Corporation Journal p. 204.

A treasury decision states that the United States bonds bearing interest at a higher rate than four per cent are to be accepted at par and credited interest in payment of the estate tax (p. 75).

A treasury decision sets forth alternative procedure for observance by transfer agents with respect to payment of tax and transfer of securities standing in the names of non-resident decedents (p. 76).

(NOTE.—The page references are to our War Tax Service, 1918, wherein the foregoing are printed in full.)

EXCESS PROFITS TAX.

For preceding references, see 3 Corporation Journal, p. 204.

A letter from a Deputy Commissioner relates to nominal capital and invested capital with respect to vaudeville theatres (p. 319).

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According to a letter from the Commissioner certain limited partnerships are held not to be corporations or associations within the meaning of the Excess Profits Tax Law (p. 320).

A treasury decision revises Article 2 of the Excess Profits Tax Regulations regarding limited partnerships (p. 321).

A letter answers the question whether treasury stock may be included under item C-8 (Form 1103) as stock, the income from which is not subject to tax (p.322).

(NOTE.—The page reference are to our War Tax Service, 1918, wherein the foregoing rulings are printed in full.)

CAPITAL STOCK TAX.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, p. 86.

STAMP TAXES.

For preceding references, see 3 Corporation Journal, p. 205.

A letter from a Deputy Commissioner relates to drafts drawn against exports (p. 753).

According to a treasury decision policies of guaranty and fidelity insurance are subject to the stamp tax on indemnity and surety bonds (p. 573).

A treasury decision classifies bonds of indebtedness and promissory notes for the purpose of the stamp tax (p. 574).

A treasury decision referring to "gold coupon notes" issued in series by a corporation, is affirmed. This decision is reprinted in full (p. 755).

(NOTE.—The page references are to our War Tax Service, 1918, wherein the foregoing are printed in full.)

WAR EXCISE TAXES.

For preceding references, see 3 Corporation Journal, p. 153.

The rulings contained in the letter referred to in the Corporation Journal for April, 1918, stating that there is no tax on articles sold abroad is suspended until further notice owing to a pending decision in the United States Supreme Court involving the matter (p. 929).

(NOTE.—The page reference is to our War Tax Service, 1918, wherein the foregoing ruling is printed in full.)

UTILITIES AND INSURANCE.

For preceding rulings, see 3 Corporation Journal, p. 173

Articles 4 and 25 of Transportation Tax Regulations No. 42, applies to charges of demurrage when incurred in connection with the transportation on freight (p.1167).

(NOTE.—The page reference is to our War Tax Service, 1918, wherein the foregoing ruling is reported in full.)

WAR TAX ON ADMISSIONS AND DUES.

No rulings or regulations have been issued since our last report. See 3 Corporation Journal, p. 205.

FEDERAL RESERVE.

For preceding references see 3 Corporation Journal, page 206.

Formal rulings of the Board relate to eligibility of a trade acceptance for gas sold (p. 615), to acceptances in domestic or foreign transactions (p. 615), to collection by federal reserve banks of bill of lading drafts (p. 616), to acceptances secured by chattel mortgage on cattle (p. 617); and to trade acceptances in connection with sales on installment plan (p. 617).

The Law Department has rendered opinions on acceptances by member banks of drafts drawn by dealers engaged in the export and domestic sale of the same character and class of goods (p. 618), on collection and payment of checks (p. 620) on acceptances by member banks of drafts drawn in transactions involving export of goods (p. 619), and on development of the Collection System (p. 625).

A letter relates to the development of the collection system (p. 625).

(NOTE.—The page references are to our Federal Reserve Act Service which reports all rulings and regulations of the Federal Reserve Board.)

TRADE COMMISSION.

For preceding references see 3 Corporation Journal, page 206.

A large number of complaints have been added to the docket since our last report (Supplementary pages 29 to 43).

(NOTE.—The page references are to our Federal Trade Commission Service.)

SOME IMPORTANT MATTERS FOR JUNE AND JULY.

This calendar does not purport to cover general taxes or reports to other than state officials or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ARIZONA	Report to Corporation Commission and Registration fee during June—Domestic and Foreign Corporations.
ARKANSAS	Franchise Tax Report due on or before June 1—Domestic and Foreign Corporations.
CALIFORNIA	Corporation Franchise Tax due on or before first Monday in July—Domestic and Foreign Corporations.
CONNECTICUT	Income Tax due on or before August 1—Domestic and Foreign Corporations.
DELAWARE	Annual Franchise Tax due between third Tuesday in March and July 1—Domestic Corporations.
DOMINION OF CANADA	Annual return of Business Profits due on or before July 1—Domestic and Foreign Corporations.
IDAHO	Annual Statement due between July 1 and September 1—Domestic and Foreign Corporations. Annual License Tax due between July 1 and September 1—Domestic and Foreign Corporations.
INDIANA	Annual Report between June 1 and July 31—Domestic Corporations. Annual Report and License Fee to Industrial Board due between July 1 and July 31—Domestic and Foreign Corporations employing five or more persons in any capacity.

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SOME IMPORTANT MATTERS FOR JUNE AND JULY—Continued.

IOWA	Annual Report due between the first day of July and the first day of August—Domestic and Foreign Corporations. Additional Statement due at the time of making the Annual Report in July—Foreign Corporations.
MISSISSIPPI	Annual Report to factory inspector due during July—Domestic and Foreign Corporations.
MISSOURI	Annual Statement, Registration and Anti-Trust Affidavit due during July—Domestic and Foreign Corporations.
NEBRASKA	Annual Report and Fee due during July—Foreign Corporations. Annual Report and Fee due on or before July 1—Domestic Corporations.
NEW YORK	Annual Return of net income on or before July 1—Domestic and Foreign Manufacturing and Mercantile Corporations.
NORTH CAROLINA	Capital Stock report to determine amount of franchise tax due during July—Foreign Corporations.
NORTH DAKOTA	Corporation Report due during July—Domestic and Foreign Corporations.
OHIO	Annual Report due during July—Foreign Corporations.
OKLAHOMA	Annual License Tax Report due on or before July 31—Domestic and Foreign Corporations. Annual Capital Stock affidavit due between July 1 and August 1—Foreign Corporations.
OREGON	Annual Statement during June and on or before July 1—Domestic and Foreign Corporations. Power of Attorney during June and on or before July 1—Domestic Mining Companies whose president does not reside in the State. Annual License Fee due within 30 days after July 15th—Domestic Corporations. License Fee due between July 1 and August 15—Foreign Corporations.
RHODE ISLAND	Corporate Excess Tax due on or before first day of July—Domestic and Foreign Corporations.
TENNESSEE	Annual Report and Franchise Tax on or before July 1—Domestic and Foreign Corporations.
UNITED STATES	Income Tax due between June 1 and 15—Domestic and Foreign Corporations. Annual capital stock return due during July—Domestic and Foreign Corporations.
WASHINGTON	License Tax on or before July 1—Domestic and Foreign Corporations.
WEST VIRGINIA	Tax Statement due on or before July 1—Domestic Corporations. Annual License Tax due on or before July 1—Domestic and Foreign Corporations. Fee to State Auditor as Attorney in Fact due on or before June 30th—Foreign and Non-Resident Domestic Corporations.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a substantial loose leaf binder for \$1.50.

Court Orders and Stock Transfers.

WHERE a court order is necessary to authorize a sale of stock, a corporation is bound to know that the order has been complied with. It is not sufficient merely to ascertain that an order has been issued.

The statutes of Indiana require that an administrator sell personal property, including corporate stock, at public sale, or if at private sale under order of court. An order of court required an administratrix to take security for the purchase price of stock in the Citizens' Street Railway Company. She took the individual note of the purchaser, without security. The sale was on a credit of ten years, whereas the administratrix had no power to give a credit exceeding twelve months. No return of the sale was made to the court or entered on its records. When the shares were offered for transfer the company examined the proceedings, but it stopped with examination of the order and did not ascertain that the sale was made in accordance with the order. Having failed to do this it was held liable to the estate for loss occasioned by its lack of diligence. (Citizens' Street Railway Co. v. Robbins, 128 Ind. 449, 26 N. E. 116; 25 Am. St. Ry. 445, 12 L. R. A. 498.)

The transfer of shares bristles with technical points and liabilities, which a corporation is seldom equipped to handle. Employing us as transfer agent constitutes both protection and economy. For further particulars ask any of our officers.

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